



CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Nick Fish, Commissioner ■ Michael Jordan, Director

March 24, 2017

Jill Fullagar
U.S. Environmental Protection Agency
Region X
Submitted via email to fullagar.jill@epa.gov

RE: OR 2012 Comment Period

Dear Ms. Fullagar:

The City of Portland's Bureau of Environmental Services appreciates the opportunity to provide comments on Partial Approval/Partial Disapproval of Oregon 2012 303d List. The Bureau of Environmental Services (Bureau) protects public health, water quality and the environment. We provide sewage and stormwater collection and treatment services to accommodate Portland's current and future needs. We protect the quality of surface and ground waters and conduct activities that plan and promote healthy ecosystems in our watersheds.

The Bureau submitted comments to the state on its proposed 2012 303(d) list and associated methodology on February 21, 2014. The Oregon Department of Environmental Quality (ODEQ) countered the majority of those comments but provided some acknowledgement that improvements could be made to the listing methodology for future efforts. The Bureau's general concerns centered on ODEQ's use of outdated water quality criteria for some pollutants, the lack of statistically robust listing protocols and the failure to use Categories 3 and 4 where appropriate. The following comments highlight some of the issues that were carried through in EPA's analysis and raise concerns about how the two agencies diverged in the listing approach. Comments are also provided on some specific Category 5 listings in the Portland area.

Listing Methodology

1. Limited evaluation of Oregon methodology

EPA's Enclosure 1, *Review of Oregon's 2012 Integrated Report* states "EPA reviewed the methodology used by ODEQ in developing its list and the description of the data and information that ODEQ considered." However, EPA has not provided any detailed analysis or results of its review of the specific methodology that was used by ODEQ to identify additional water quality limited segments. EPA's limited assessment focused on whether ODEQ considered readily available data but not whether ODEQ correctly (or incorrectly) applied methodology for data that were available. Enclosure 6 has some detail on EPA's assessment methodology but not a review of ODEQ's, nor does it explicitly describe areas where EPA deviated from the state's methods. Further, it only includes methods for the limited parameters for which EPA conducted an assessment. Please provide more information about EPA's review of ODEQ's applied methodology, how the two differ, and describe why specific adjustments were made by EPA. Please also clarify EPA's definition of "insufficient data" for purposes of using Category 3.

2. Divergent use of data quality levels

EPA's Enclosure 6, *EPA Listing Methodology for Oregon 2012 303(d) List* states that "Only A and A+ Quality Assurance/Quality Control (QA/QC) status data were used" in EPA's analysis. In contrast, ODEQ used "data meeting data quality level A or B requirements for the 305(b)/303(d) assessment" as stated in its methodology document. The application of different standards is noteworthy since it yields different 303(d) list results. Some of the state's listings are based solely on the inclusion of Quality Level B data. Please explain the rationale behind EPA's exclusion of Quality Level B data from its analysis.

3. Divergent use of applicable water quality criteria

EPA used the most current approved standards in its analysis, whereas ODEQ did not. Updated standards for a number of metals had been approved for the state's use in January 2013, which was well before ODEQ submitted its Integrated Report to EPA in November 2014. ODEQ acknowledged this discrepancy in its response to public comments, yet the affected listings were not updated. Similarly, there is no indication that EPA is correcting or 'de-listing' any water bodies that no longer qualify for Category 5 based on the current standards. Please clarify the status of any affected listings, why EPA did not remove those from the list, and the process for ODEQ to delist them.

4. No correction of potentially flawed listings

EPA is only proposing additional listings but not the removal or correction of flawed listings. A number of water bodies were incorrectly placed on the 303(d) list by ODEQ based on insufficient methods or for other reasons as specified previously, yet EPA has given no indication that it is updating or correcting these listings. It is inappropriate to apply methodologies to increase listings but not to de-list water bodies that aren't truly impaired. This one-sided approach significantly and unduly increases the burden on regulated parties and misleads the public about the health of local water bodies. The majority of NPDES permittees are impacted by Category 5 listings due to the associated requirements for monitoring, evaluation and control of 303(d) pollutants and some parties are prevented from obtaining NPDES permits due to the listings. Please confirm that EPA did not take action to correct questionable listings and please clarify the expected process and timeline in addressing those listings.

5. Unreasonably stringent listing protocols for toxics

Using only two results as the basis for an impairment listing is unreasonably stringent, especially in cases where ample data exists for a more statistically valid determination. In its response to public comments DEQ stated that "For the 2012 303(d) list, ODEQ followed protocols in the 2012 Methodology which do not include methods to evaluate larger data sets to...allow exceedances of 5% frequency for toxic substances. ODEQ acknowledges that an assessment methodology could consider protocols to evaluate large data sets, and to apply the frequency and duration elements of the aquatic life and human health criteria." The practice of using only two results to list water bodies even when large data sets exist gives rise to unnecessary listings and masks true problem areas. Toxics related listings should be based on a percentage of exceedances and should take into account the magnitude, duration and frequency of exceedances. In cases where there are insufficient data, Category 3 should be used.

In addition, there are cases where listings are made for large segments of waterbodies based on data taken at locations that do not necessarily represent the whole. For example, phosphorus listings for the Lower Willamette were based on measurements at the Swan

Island Channel, which has sufficiently distinct characteristics to merit consideration as a separate waterbody.

Specific Listings

6. Columbia Slough – Aquatic Weeds (Water Primrose) (EPA Additional Listing)

It appears that EPA is proposing to add Aquatic Weeds (Water Primrose) to the 303(d) list for the Columbia Slough on the basis of a City of Portland website (<https://www.portlandoregon.gov/bes/66724>). Please confirm the data source(s) for this specific listing. If the data source is correct as noted, please explain how websites and web searches qualify as 'Quality Level A' data and how this comports with EPA's guidance.¹

7. Columbia Slough – Biocriteria (DEQ 2012 Listing)

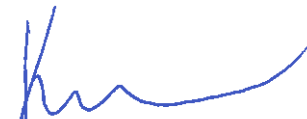
The PREDATOR model used by ODEQ in its methodology for biocriteria requires the comparison of results to a *valid reference stream* to determine the health of the biological communities. An appropriate and valid reference site has not been identified for the Columbia Slough, which is a non-riffle low gradient waterway that is not wadeable. In its response to public comments, ODEQ acknowledged this discrepancy but did not update or correct the listing. Category 3B is the appropriate assignment for this specific listing until further refinements of the PREDATOR model are implemented. Please revise the Columbia Slough biocriteria listing accordingly and/or clarify the basis for a Category 5 listing in the absence of an appropriate model for sites such as the Columbia Slough.

8. Ross Island Lagoon – Aquatic Weeds (Harmful Algal Blooms) (EPA Additional Listing)

EPA is proposing to add Harmful Algal Blooms (HABs) to the 303(d) list for the Ross Island Lagoon. The listing is based on Oregon Health Advisories beginning in late summer 2014 cautioning the public about recreating in the area due to the presence of high concentrations of algae that can produce toxic compounds. HABs can cause sickness, impairment or death in humans, pets and wildlife that come in contact with or drink the affected water. BES supports this listing, which will trigger further ODEQ evaluation of appropriate prevention and control of these HABs.

Thank you again for the opportunity to provide input. If you have any questions regarding these comments, please contact Loren Shelley at loren.shelley@portlandoregon.gov or at 503-823-5275 for more information.

Sincerely,



Kim Cox
City of Portland, BES
Environmental Policy Division Manager

Cc: Andrea Matzke, Oregon Department of Environmental Quality
Karla Urbanowicz, Oregon Department of Environmental Quality

¹ EPA, 1991. Guidance for Water Quality Based Decisions: The TMDL Process. EPA 440/491-001 US Environmental Protection Agency, Office of Water, Washington, DC.